

## TITLE VIII-IMPACT AID

### Section 8001. Purpose

In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children, because certain activities of the Federal Government place a financial burden on the local educational agencies serving areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this title to provide financial assistance to local educational agencies that—

- (1) experience a substantial and continuing financial burden due to the acquisition of real property by the United States;
- (2) educate children who reside on Federal property and whose parents are employed on Federal property;
- (3) educate children of parents who are in the military services and children who live in low-rent housing;
- (4) educate heavy concentrations of children whose parents are civilian employees of the Federal Government and do not reside on Federal property;
- (5) experience sudden and substantial increases or decreases in enrollments because of military realignments; or
- (6) need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands.

### Section 8002. Payments Relating to Federal Acquisition of Real Property.

(a) IN GENERAL.-Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for a fiscal year ending prior to October 1, 1999—

(1) that the United States owns Federal property in the local educational agency, and that such property—

(A) has been acquired by the United States since 1938;

(B) was not acquired by exchange for other Federal property in the local educational agency which the United States owned before 1939; and

(C) had an assessed value (determined as of the time or times when so acquired) aggregating 10 percent or more of the assessed value of—

(i) all real property in the local educational agency (similarly determined as of the time or times when such Federal property was so acquired); or

(ii) all real property in the local educational agency as assessed in the first year preceding or succeeding acquisition, whichever is greater, only if—

(I) the assessment of all real property in the local educational agency is not made at the same time or times that such Federal property was so acquired and assessed; and

(II) State law requires an assessment be made of property so acquired; and

(2) that such agency is not being substantially compensated for the loss in revenue resulting from such ownership by increases in revenue accruing to the agency from the conduct of Federal activities with respect to such Federal property, then such agency shall be eligible to receive the amount described in subsection (b).

(b) AMOUNT.—

(1) IN GENERAL.-(A)(i) The amount that a local educational agency shall be paid under

subsection (a) for a fiscal year shall be calculated in accordance with paragraph (2), except that such amount shall be reduced by the Secretary by an amount equal to the amount of revenue, if any, that such agency received during the previous fiscal year from activities conducted on such Federal property.

(ii) For purposes of clause (i), the amount of revenue that a local educational agency receives during the previous fiscal year from activities conducted on Federal property shall not include payments received by the agency from the Secretary of Defense to support—

(I) the operation of a domestic dependent elementary or secondary school; or

(II) the provision of a free public education to dependents of members of the Armed Forces residing on or near a military installation.

(B) If funds appropriated under section 8014(a) are insufficient to pay the amount determined under sub-paragraph (A), the Secretary shall ratably reduce the payment to each eligible local educational agency.

(C) Notwithstanding any other provision of this subsection, a local educational agency may not be paid an amount under this section that, when added to the amount such agency receives under section 8003(b), exceeds the maximum amount that such agency is eligible to receive for such fiscal year under section 8003(b)(1)(C).

(2) APPLICATION OF CURRENT LEVIED REAL PROPERTY TAX RATE.-In calculating the amount that a local educational agency is eligible to receive for a fiscal year, the Secretary shall apply the current levied real property tax rate for current expenditures levied by fiscally independent local educational agencies, or imputed for fiscally independent local educational agencies, to the current annually determined aggregate assessed value of such acquired Federal property.

(3) DETERMINATION OF AGGREGATE ASSESSED VALUE.-Such aggregate assessed value of such acquired Federal property shall be determined on the basis of the highest and best use of property adjacent to such acquired Federal property as of the time such value is determined, and provided to the Secretary, by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for the purpose of levying a property tax.

(c) APPLICABILITY TO TENNESSEE VALLEY AUTHORITY ACT.-For the purpose of this section, any real property with respect to which payments are being made under section 13 of the Tennessee Valley Authority Act of 1933 shall not be regarded as Federal property.

(d) OWNERSHIP BY UNITED STATES.-The United States shall be deemed to own Federal property for the purposes of this Act, where prior to the transfer of Federal property, the United States owned Federal property meeting the requirements of sub-paragraphs (A), (B), and (C) of subsection (a)(1); and

(2) the United States transfers a portion of the property referred to in paragraph (1) to another non-taxable entity, and the United States—

(A) restricts some or any construction on such property;

(B) requires that the property be used in perpetuity for the public purposes for which the property was conveyed;

(C) requires the grantee of the property to report to the Federal Government (or its agent) regarding information on the use of the property;

(D) except with the approval of the Federal Government (or its agent), prohibits the sale, lease, assignment, or other disposal of the property unless such sale, lease,

assignment, or other disposal is to another eligible government agency; and

(E) reserves to the Federal Government a right of reversion at any time the Federal Government (or its agent) deems it necessary for the national defense.

(e) LOCAL EDUCATIONAL AGENCY CONTAINING FOREST SERVICE LAND AND SERVING

CERTAIN COUNTIES.-Beginning with fiscal year 1995, a local educational agency shall

be deemed to meet the requirements of subsection (a)(1)(C) if such local educational agency meets the following requirements:

(1) ACREAGE AND ACQUISITION BY THE FOREST SERVICE.-The local educational agency

serves a school district that contains between 20,000 and 60,000 acres of land that has been acquired by the Forest Service of the Department of Agriculture between 1915 and 1990, as demonstrated by written evidence from the Forest Service satisfactory to the Secretary.

(2) COUNTY CHARTER.-The local educational agency serves a county chartered under

State law in 1875 or 1890.

(f) (1) SPECIAL RULE.-Beginning with fiscal year 1994 and notwithstanding any other

provision of law limiting the period during which fiscal year 1994 funds may be obligated, the Secretary shall treat the local educational agency serving the Wheatland R-II School District, Wheatland, Missouri, as meeting the eligibility requirements of section 2(a)(1)(C) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) (20 U.S.C. 237(a)(1)(C)) or subsection (a)(1)(C).

(2) For each fiscal year beginning with fiscal year 1999, the Secretary shall treat the Webster School District, Day County, South Dakota as meeting the eligibility requirements of subsection (a)(1)(C) of this section."

(g) FORMER DISTRICTS.-

(1) IN GENERAL.-Where the school district of any local educational agency described in

paragraph (2) is formed at any time after 1938 by consolidation of two or more former school districts, such agency may elect (at any time such agency files an application under section 8005) for any fiscal year after fiscal year 1994 to have (A) the eligibility of such local educational agency, and (B) the amount which such agency shall be eligible to receive, determined under this section only with respect to such of the

former school districts comprising such consolidated school districts as such agency shall designate in such election.

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.-A local educational agency referred to in

paragraph (1) is any local education agency that, for fiscal year 1994 or any preceding fiscal year, applied for and was determined eligible under section 2(c) of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect for such fiscal year.

(h) HOLD HARMLESS AMOUNTS.-

(1) IN GENERAL.-Except as provided in paragraph (2)(A), the total amount that the Secretary shall pay under subsection (b) to a local education agency that is otherwise eligible for a payment under this section-

(A) for fiscal year 1995 shall not be less than 85 percent of the amount such agency received for fiscal year 1994 under section 2 of the Act of September 30, 1950 (Public Law 874, 81st Congress) as such section was in effect on September 30, 1994;

(B) for fiscal year 1996 shall not be less than 85 percent of the amount such agency received for fiscal year 1995 under subsection (b); and

(C) for fiscal year 1997 and each succeeding fiscal year through fiscal year 2000 shall not be less than 85 percent of the amount such agency received for fiscal year 1996 under subsection (b).

(2) RATABLE REDUCTIONS.- (A)(i) If necessary in order to make payments to local educational agencies in accordance with paragraph (1) for any fiscal year, the Secretary first shall ratably reduce payments under subsection (b) for such year to local educational agencies that do not receive a payment under this subsection for such year.

(ii) If additional funds become available for making payments under subsection (b) for such year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

(B)(i) If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraph (1) after the application of subparagraph (A) for such year, then the Secretary shall ratably reduce payments under paragraph (1) to all such agencies for such year.

(ii) If additional funds become available for making payments under paragraph (1) for such fiscal year, then payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

(i) PRIORITY PAYMENTS.-

(1) IN GENERAL.-Notwithstanding subsection (b)(1)(B), and for any fiscal year beginning with fiscal year 1997 for which the amount appropriated to carry out this section exceeds the amount so appropriated for fiscal year 1996-

(A) the Secretary shall first use the excess amount (not to exceed the amount equal to the difference of (i) the amount appropriated to carry out this section for fiscal year 1997, and (ii) the amount appropriated to carry out this section for fiscal year 1996) to increase the payment that would otherwise be made under this section to not more than 50 percent of the maximum amount determined under subsection (b) for any local educational agency described in paragraph (2); and

(B) the Secretary shall use the remainder of the excess amount to increase the payments to each eligible local education agency under this section.

(2) LOCAL EDUCATIONAL AGENCY DESCRIBED.-A local educational agency described in

this paragraph is a local education agency that-

(A) received a payment under this section for fiscal year 1996;

(B) serves a school district that contains all or a portion of a United States military academy;

(C) serves a school district in which the local tax assessor has certified that at least 60 percent of the real property is federally owned; and

(D) demonstrates to the satisfaction of the Secretary that such agency's per-pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

(j) ADDITIONAL ASSISTANCE FOR CERTAIN LOCAL EDUCATIONAL AGENCIES IMPACTED BY FEDERAL PROPERTY ACQUISITION.-

(1) RESERVATION.-From amounts appropriated under section 8014(g) for a fiscal year,

the Secretary shall provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

(2) ELIGIBILITY.-(A) A local educational agency is eligible to receive additional assistance under this subsection only if such Agency -

(I) received a payment under both this section and section 8003(b) for fiscal year 1996 and is eligible to receive payments under those sections for the year of application;

(ii) provided a free public education to children described under sections 8003(a)(1)(A),(B),or (D);

(iii) had military installation located within the geographic boundaries of the local education agency that was closed as a result of base closure of realignments;

(iv) remains responsible for the free public education of children resident in housing located on Federal property within the boundaries of the closed military installation but whose parents are on active duty in the uniformed services and assigned to a military activity located within the boundaries of an adjoining local educational agency; and

(v) demonstrates to the satisfaction of the Secretary that such agency's per pupil revenue derived from local sources for current expenditures is not less than that revenue for the preceding fiscal year.

(3) MAXIMUM AMOUNT.- (A) The maximum amount that a local educational agency is eligible to receive under this subsection for any fiscal year, when combined with its payment under subsection (b), shall not be more than 50 percent of the maximum amount determined under subsection (b);

(B) If funds appropriated under section 8014(g) are insufficient to pay the amount determined under subparagraph (A), the Secretary shall ratably reduce the payment of each local education agency eligible under this subsection;

(C) If funds appropriated under section 8014(g) are in excess of the amount determined under subparagraph (A) the Secretary shall ratably distribute any excess funds to all local educational agencies eligible for payment under subsection (b) of this section. For the purpose of carrying out section 8002(j) there are authorized to be appropriated such sums as are necessary beginning in fiscal year 1998 and for each succeeding fiscal year and \$24,000,000 shall be for Federal property payments under section 8002 of which such sums as may be necessary shall be for section 8002(j).

(k) SPECIAL RULE – For purposes of payments under this section for each fiscal year beginning with fiscal year 1998 –

(1) the Secretary shall, for the Stanley County, South Dakota local educational agency, calculate payments as if subsection (d) had been in effect for fiscal year 1994; and

(2) the Secretary shall treat the Delaware Valley, Pennsylvania local educational agency as if it had filed a timely application under section 2 of Public Law 81-874 for fiscal year 1994.

\*P.L.105-78 provided further that the Secretary of Education shall deem the local education agency serving the Clinton County School District in Albany, Kentucky, to meet the eligibility requirements of section 8002(a)(1)(c).

Section 8003. Payments for Eligible Federally Connected Children.

(a) COMPUTATION OF PAYMENT.-

(1) IN GENERAL.-For the purpose of computing the amount that a local educational agency is eligible to receive under subsection (b), (d), or (f) for any fiscal year, the Secretary shall determine the number of children who were in average daily attendance in the schools of such agency, and for whom such agency provided free public education during the preceding school year and who, while in attendance at such schools—

(A)(i) resided on Federal property with a parent employed on Federal property situated in whole or in part within the boundaries of the school district of such agency; or

(ii) resided on Federal property with a parent who is an official of, and accredited by, a foreign government and is a foreign military officer;

(B) resided on Federal property and had a parent on active duty in the uniformed services (as defined in section 101 of title 37, United States Code);

(C) resided on Indian lands;

(D)(i) had a parent on active duty in the uniformed services (as defined by section 101 of title 37, United States Code) but did not reside on Federal property; or

(ii) had a parent who is an official of, and has been accredited by, a foreign government and is a foreign military officer but did not reside on Federal property;

(E) resided in low-rent housing;

(F) resided on Federal property and is not described in sub-paragraph (A) or (B); or

(G) resided with a parent employed on Federal property situated-

(i) in whole or in part in the county in which such agency is located, or in whole or in part in such agency if such agency is located in more than one county; or

(ii) if not in such county, in whole or in part in the same State as such agency.



(2) DETERMINATION OF WEIGHTED STUDENT UNITS.-For the purpose of computing the

basic support payment under subsection (b), the Secretary shall calculate the total number of weighted student units for a local educational agency by adding together the results obtained by the following computations:

(A) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of 1.0.

(B) Multiply the number of children described in paragraph (1)(C) by a factor of 1.25.

(C) Multiply the number of children described in subparagraphs (A) and (B) of paragraph (1) by a factor of .35 if the local educational agency has—

(i) a number of such children described in such subparagraphs which exceeds 6,500; and

(ii) an average daily attendance for all children which exceeds 100,000.

(D) Multiply the number of children described in subparagraphs (D) and (E) of paragraph (1) by a factor of .10.

(E) Multiply the number of children described in subparagraphs (F) and (G) of paragraph (1) by a factor of .05.

(3) SPECIAL RULE.- The Secretary shall only compute a payment for a local educational

agency for children described in subparagraph (F) or (G) of paragraph (1) if the number of such children equals or exceeds 1,000 or such number equals or exceeds 10 percent of the total number of students in average daily attendance in the schools of such agency.

(4)(A) MILITARY INSTALLATION HOUSING UNDERGOING RENOVATION.- For purposes of

computing the amount of a payment for a local educational agency for children described in paragraph (1)(D)(i), the Secretary shall consider such children to be children described in paragraph (1)(B) if the Secretary determines, on the basis of a certification provided to the Secretary by a designated representative of the Secretary of Defense, that such children would have resided in housing on Federal property in accordance with paragraph (1)(B) except that such housing was undergoing renovation on the date for which the Secretary determines the number of children under paragraph (1).

(B) EFFECTIVE DATE.-Paragraph (4) of Section 8003(a) of the Elementary and Secondary Education Act of 1965, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1995.

(b) BASIC SUPPORT PAYMENTS AND PAYMENTS WITH RESPECT TO  
FISCAL YEARS IN  
WHICH INSUFFICIENT FUNDS ARE APPROPRIATED.—

(1) BASIC SUPPORT PAYMENTS.—

(A) IN GENERAL.—From the amount appropriated under section 8014(b) for a fiscal year, the Secretary is authorized to make basic support payments to eligible local educational agencies with children described in subsection (a).

(B) ELIGIBILITY.—A local educational agency is eligible to receive a basic support payment under subparagraph (A) for a fiscal year with respect to a number of children determined under subsection (a)(1) only if the number of children so determined with respect to such agency amounts to the lesser of—

- (i) at least 400 such children; or
- (ii) a number of such children which equals at least 3 percent of the total number of children who were in average daily attendance, during such year, at the schools of such agency and for whom such agency provided free public education.

(C) MAXIMUM AMOUNT.—The maximum amount that a local educational agency is eligible to receive under this subsection for any fiscal year is the sum of the total weighted student units, as computed under subsection (a)(2), multiplied by the greater of—

- (i) one-half of the average per-pupil expenditure of the State in which the local educational agency is located for the third fiscal year preceding the fiscal year for which the determination is made;
- (ii) one-half of the average per-pupil expenditure of all of the States for the third fiscal year preceding the fiscal year for which the determination is made;
- (iii) the comparable local contribution rate certified by the State, as determined under regulations prescribed to carry out the Act of September 30, 1950 (Public Law 874, 81st Congress), as such regulations were in effect on January 1, 1994; or
- (iv) the average per-pupil expenditure of the State in which the local educational agency is located, multiplied by the local contribution percentage.

(2) PAYMENTS WITH RESPECT TO FISCAL YEARS IN WHICH INSUFFICIENT  
FUNDS ARE  
APPROPRIATED.—

(A) IN GENERAL.—For any fiscal year in which the sums appropriated under section

8014(b) are insufficient to pay to each local educational agency the full amount computed under paragraph (1), the Secretary shall make payments in accordance with this paragraph.

(B) LEARNING OPPORTUNITY THRESHOLD PAYMENTS.-(i) For fiscal years described in

subparagraph (A), the Secretary shall compute a learning opportunity threshold payment (hereafter in this title referred to as the ‘threshold payment’) by multiplying the amount obtained under paragraph (1)(C) by the total percentage obtained by adding—

(I) the percentage of federally connected children for each local educational agency determined by calculating the fraction, the numerator of which is the total number of children described under subsection (a)(1) and the denominator of which is the total number of children in average daily attendance at the schools served by such agency; and

(II) the percentage that funds under paragraph (1)(C) represent of the total budget of the local educational agency, determined by calculating the fraction, the numerator of which is the total amount of funds calculated for each local educational agency under this paragraph (not including amounts received under subsection (f)), and the denominator of which is the total current expenditures for such agency in the second preceding fiscal year for which the determination is made.

(ii) Such total percentage used to calculate threshold payments under paragraph (1) shall not exceed 100.

(iii) For the purpose of determining the percentages described in subclauses (I) and (II) of clause (i) that are applicable to the local educational agency providing free public education to students in grades 9 through 12 residing on Hanscom Air Force Base, Massachusetts, the Secretary shall consider only that portion of such agency’s total enrollment of students in grades 9 through 12 when calculating the percentage under such subclause (I) and only that portion of the total current expenditures attributed to the operation of grades 9 through 12 in such agency when calculating the percentage under subclause (II).

(C) Ratable Distribution.-For fiscal years described in subparagraph (A), the Secretary shall make payments as a ratable distribution based upon the computation made under subparagraph (B).

(3) STATES WITH ONLY ONE LOCAL EDUCATIONAL AGENCY.-

(A) IN GENERAL.-In any of the 50 States of the United States in which there is only one

local educational agency, the Secretary shall, for purposes of paragraphs (1)(B), (1)(C), and (2) of this subsection , and subsection (e), consider each administrative

school district in the State to be a separate local educational agency.

**(B) COMPUTATION OF MAXIMUM AMOUNT OF BASIC SUPPORT PAYMENT AND**

**THRESHOLD PAYMENT.**-In computing the maximum payment amount under paragraph

(1)(C) and the learning opportunity threshold payment under paragraph (2)(B) for an administrative school district described in subparagraph (A)-

(i) the Secretary shall first determine the maximum payment amount and the total current expenditures for the State as a whole; and

(ii) the Secretary shall then-

(I) proportionately allocate such maximum payment amount among the administrative school districts on the basis of the respective weighted student units of such districts; and

(II) proportionately allocate such total current expenditures among the administrative school districts on the basis of the receptive number of students in average daily attendance at such districts

**(C) EFFECTIVE DATE.**-Paragraph (3) of section 8003(b) of the Elementary and Secondary Education Act of 1965, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1994.

**(c) PRIOR YEAR DATA.—**

(1) **IN GENERAL.**-Except as provided in paragraph (2) and subsection (f), all calculations under this section shall be based on data for each local educational agency from not later than the fiscal year preceding the fiscal year for which the agency is making application for payment.

(2) **EXCEPTION.**-Calculations for a local educational agency that is newly established by a State shall, for the first year of operation of such agency, be based on data from the fiscal year for which the agency is making application for payment.

**(d) CHILDREN WITH DISABILITIES.—**

(1) **IN GENERAL.**-From the amount appropriated under section 8014(c) for a fiscal year, the Secretary shall pay to each eligible local educational agency, on a pro rata basis, the amounts determined by-

(A) multiplying the number of children described in subparagraphs (A)(ii), (B) and (C) of subsection (a)(1) who are eligible to receive services under the Individuals with

Disabilities Education Act (20 U.S.C. 1400 et seq.) by a factor of 1.0; and

(B) multiplying the number of children described in subparagraph (D) of subsection (a)(1) who are eligible to receive services under such Act by a factor of 0.5.

(2) USE OF FUNDS.-A local educational agency that receives funds under paragraph (1) shall use such funds to provide a free appropriate public education to children described in paragraph (1) in accordance with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(e) HOLD-HARMLESS AMOUNTS.—

(1) IN GENERAL.-(A) Except as provided in paragraph (4)(A), the total amount that the

Secretary shall pay a local educational agency under subsection (b) shall not be less than 85 percent of the amount such agency received for the preceding fiscal year—

(i) in the case of fiscal year 1995 only, under subsections (a) and (b) of section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994); or

(ii) in the case of fiscal years 1996, 1997, 1998, or 1999, under such subsection (b).

(B) For fiscal year 1995 only, the Secretary shall pay, to each local educational agency that is not eligible for a payment under subsection (b) but that received a payment under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for fiscal year 1994, an amount which is not less than 85 percent of the payment such agency received under such section 3 for fiscal year 1994.

(2) TWO-YEAR APPLICABILITY.-Paragraph (1)(A) shall apply to any one local educational agency for a maximum of two consecutive fiscal years.

(3) PHASE-OUT PAYMENT.-A local educational agency which received a payment under section 3(e) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for fiscal year 1994 is eligible to receive a payment, under subsection (b) for fiscal year 1995, in an amount which is not less than 85 percent of the amount received by such agency in fiscal year 1994 under such section 3(e).

(4) RATABLE REDUCTIONS.-(A)(1) If necessary in order to make payments to local educational agencies in accordance with paragraphs (1) and (2), the Secretary first shall ratably reduce payments under subsection (b) to local educational agencies that do not receive a payment under this subsection.

(ii) If additional funds become available for making payments under subsection (b) for such fiscal year, payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

(B)(i) If the sums made available under this title for any fiscal year are insufficient to pay the full amounts that all local educational agencies in all States are eligible to receive under paragraphs (1) and (2) after the application of subparagraph (A) for such year, the Secretary shall ratably reduce payments to all such agencies for such year.

(ii) If additional funds become available for making payments under paragraphs (1) and (2) for such fiscal year, payments that were reduced under clause (i) shall be increased on the same basis as such payments were reduced.

(f) ADDITIONAL ASSISTANCE FOR HEAVILY IMPACTED LOCAL  
EDUCATIONAL  
AGENCIES.—

(1) RESERVATION.-From amounts appropriated under section 8014(b) for a fiscal year,  
the Secretary shall provide additional assistance to meet special circumstances relating to the provision of education in local educational agencies eligible to receive assistance under this section.

(2) ELIGIBILITY.-(A) A local educational agency is eligible to receive additional assistance under this subsection if such agency is eligible for a supplementary payment in accordance with subparagraph (B) or such agency-

(i)(I) has an enrollment of federally connected children described in subsection (a)(I) which constitutes a percentage of the total student enrollment of such agency which is not less than 50 percent if such agency receives a payment on behalf of children described in subparagraphs (F) and (G) of such subsection, or not less than 40 percent if such agency, does not receive a payment on behalf of such children; and

(II) has a tax rate for general fund purposes which is at least 95 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State;

(ii)(I) has an enrollment of federally connected children described in subsection (a)(1) which constitutes at least 25 percent of the total student enrollment of such agency. For purposes of this subclause, all students described in section 8003(a)(1) are used to

determine legibility, regardless of whether or not a local education agency receives funds for these children from section 8003(b) of the Act; and

(II) has a tax rate for general fund purposes which is at least 125 percent of the average tax rate for general fund purposes of comparable local educational agencies in the State; or

(iii) is a local educational agency whose boundaries are the same as a Federal military installation.

(B) If the current expenditures in those local educational agencies which the Secretary has determined to be generally comparable to the local educational agency for which a computation is made under subsection (b)(1)(C) are not reasonably comparable because of unusual geographical factors which affect the current expenditures necessary to maintain, in such agency, a level of education equivalent to that maintained in such other agencies, then the Secretary shall increase the local contribution rate for such agency by such an amount which the Secretary determines will compensate such agency for the increase in current expenditures necessitated by such unusual geographical factors. The amount of any such supplementary payment may not exceed the per-pupil share (computed with regard to all children in average daily attendance), as determined by the Secretary, of the increased current expenditures necessitated by such unusual geographic factors.

(C) Any local educational agency determined eligible under clause (iii) of subparagraph

(A) shall be deemed to have met the tax effort requirements for eligibility under clause (i)(II) or (ii)(II) of such subparagraph.

(D) A local educational agency shall only be eligible to receive additional assistance under this subsection if the secretary determines that-

(i) such agency is exercising due diligence in availing itself of State and other financial assistance; and

(ii) the eligibility of such agency under State law for State aid with respect to the free public education of children described in subsection (a)(1) and the amount of such aid are determined on a basis no less favorable to such agency than the basis used in determining the eligibility of local education agencies for State aid, and the amount of such aid, with respect to the free public education of other children in the State.

### (3) MAXIMUM PAYMENTS.-

(A) IN GENERAL.-Subject to subparagraph (B), the Secretary shall determine the maximum amount that a local educational agency may receive under this subsection (other than any amount received under paragraph (2)(B)) in accordance with the following computations:

(i) The Secretary, in conjunction with the local educational agency, shall first determine each of the following:

(I) The average per-pupil expenditure of the State in which the local educational agency is located;

(II) The average per-pupil expenditure of generally comparable local educational agencies located in the State of the local educational agency, as defined in regulations issued by the Secretary; or

(III) The average per-pupil expenditure of three generally comparable local educational agencies located in the State of the local educational agency, as defined in regulations issued by the Secretary.

The local educational agency shall select one of the amounts determined under subclause (I), (II), (III) for purposes of the remaining computations under this subparagraph.

(ii) The Secretary shall next multiply the amount determined under clause (i) by the total number of students in average daily attendance at the schools of the local educational agency.

(iii) The Secretary shall next subtract from the amount determined under clause (ii) all funds available to the local educational agency for current expenditures, but, except as provided for in subparagraph (C), shall not so subtract funds provided-

(I) under this Act; or

(II) by any department or agency of the Federal Government (other than the Department) that are used for capital expenses.

(iv) If the tax rate used by the local educational agency is greater than 95 percent, but less than 100 percent, of the tax rate of comparable local educational agencies, the Secretary shall next multiply the amount determined under clause (iii) by the percentage that the tax rate of the local educational agency is of—

(I) the average tax rate of its generally comparable local educational agencies; or

(II) the average tax rate of all the local educational agencies in the State in which the local educational agency is located.

(v) The Secretary shall next subtract the total amount of payments received by a local educational agency under subsections (b) and (d) for a fiscal year from the amount determined under clause (iii) or clause (iv), as the case may be.



(B) SPECIAL RULE.-With respect to payments under this subsection for a fiscal year for

a local educational agency described in clause (ii) or (iii) of paragraph (2)(A), the maximum amount of payments under this subsection shall be equal to-

(i) the product of-

(I) the average per-pupil expenditure in all States multiplied by 0.7, except that such amount may not exceed 125 percent of the average per-pupil expenditure in all local educational agencies in the State; multiplied by

(II) the number of students described in subparagraph (A) or (B) of subsection (a)(1) for such agency; minus

(ii) the amount of payments such agency receives under subsections (b) and (d) for such year.

(C) DETERMINATION OF AVAILABLE FUNDS.-When determining the amount of funds

available to the local educational agency for current expenditures for purposes of subparagraph (A)(iii) for a fiscal year, the Secretary shall include, with respect to the local educational agency's opening cash balance for such fiscal year, the portion of such balance that is greater of-

(i) the amount that exceeds the maximum amount of funds for current expenditures that the local educational agency was allowed by State law to carry over from the prior fiscal year, if State restrictions on such amounts were applied uniformly to all local educational agencies in the State; or

(ii) the amount that exceeds 30 percent of the local educational agency's operating costs for the prior fiscal year.

(D) EFFECTIVE DATE.-The amendments made by subsections (a) and (b) shall apply with respect to fiscal years after fiscal year 1996.

(4) DATA.-For purposes of providing assistance under this subsection the Secretary-

(A) shall use student, revenue, expenditure and tax data from the second fiscal year preceding the fiscal year for which the local educational agency is applying for assistance under this subsection.

(B) EFFECTIVE DATE.-The amendments made by subsection (a) shall apply with respect to fiscal years after fiscal year 1997.

(5) REDUCTION IN PAYMENTS.-If funds appropriated to carry out this subsection are

insufficient to pay in full the amounts determined under paragraph (3), the Secretary shall ratably reduce the payment to each eligible local educational agency.

(g) ADDITIONAL PAYMENTS FOR LOCAL EDUCATIONAL AGENCIES WITH HIGH

CONCENTRATIONS OF CHILDREN WITH SEVERE DISABILITIES.-

(1) IN GENERAL.-If any local educational agency receives Federal funds from sources

other than this title to carry out the purposes of this title for any fiscal year due to the enrollment of children described under subsection (a), then the Secretary shall consider such funds as a payment to such agency under this part for such fiscal year.

(2) SPECIAL RULE.-Notwithstanding any other provision of law, if funds appropriated

pursuant to section 8014(b) for payments under subsection (b) to such agency for a fiscal year which, when added to the funds described in paragraph (1) received by such agency for such fiscal year, exceed the maximum amount described under subsection (b)(1)(C), then the Secretary shall make available from the funds appropriated under section 8014(b) for such fiscal year such excess amounts to any local educational agency serving two or more children described under subpara-graph (B) or (D) of subsection (a)(1) who have a severe disability and a parent serving in the uniformed services (as defined by section 101 of title 37, United States Code) who is assigned to a particular permanent duty station for compassionate reasons (compassionate post assignment) for the total costs associated with such children who are provided an educational program provided outside the schools of such agency.

(3) REMAINING FUNDS.-If funds remain after payments are made under paragraph (2)

for any fiscal year, then such remaining funds shall be made available for expenditures under subsection (d) in such fiscal year on a pro rata basis consistent with the requirements of such subsection.

(4) RATABLE REDUCTIONS.-If amounts available to carry out paragraph (2) for any fiscal year are insufficient to pay in full the total payment that all eligible local educational agencies are eligible to receive under such paragraph for such year, then the Secretary shall ratably reduce such payments to such agencies for such year.

(h) OTHER FUNDS.-Notwithstanding any other provision of law, a local educational agency receiving funds under this section may also receive funds under section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in

effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or such section's successor authority.

(i) **MAINTENANCE OF EFFORT.**-A local educational agency may receive funds under sections 8002 and 8003(b) for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

#### Section 8004. Policies and Procedures Relating to Children

##### Residing on Indian Lands.

(a) **IN GENERAL.**-A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall establish policies and procedures to ensure that—

(1) such children participate in programs and activities supported by such funds on an equal basis with all other children;

(2) parents of such children and Indian tribes are afforded an opportunity to present their views on such programs and activities, including an opportunity to make recommendations on the needs of those children and how the local educational agency may help such children realize the benefits of such programs and activities;

(3) parents and Indian tribes are consulted and involved in planning and developing such programs and activities;

(4) relevant applications, evaluations, and program plans are disseminated to the parents and Indian tribes; and

(5) parents and Indian tribes are afforded an opportunity to present their views to such agency regarding such agency's general educational program.

(b) **RECORDS.**-A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall maintain records demonstrating such agency's compliance with the requirements contained in subsection (a).

(e) **WAIVER.**-A local educational agency that claims children residing on Indian lands for the purpose of receiving funds under section 8003 shall not be required to comply with the requirements of subsections (a) and (b) for any fiscal year with respect to any Indian tribe from which such agency has received a written statement that the agency

need not comply with those subsections because the tribe is satisfied with the provision of educational services by such agency to such children.

(d) TECHNICAL ASSISTANCE ENFORCEMENT.-The Secretary shall—

(1) provide technical assistance to local educational agencies, parents, and Indian tribes to enable such agencies, parents, and tribes to carry out this section; and

(2) enforce this section through such actions, which may include the withholding of funds, as the Secretary determines to be appropriate, after affording the affected local educational agency, parents, and Indian tribe an opportunity to present their views.

(e) COMPLAINTS.—

(1) IN GENERAL.-(A) Any tribe, or its designee, which has students in attendance at a local educational agency may, in its discretion and without regard to the requirements of any other provision of law, file a written complaint with the Secretary regarding any action of a local educational agency taken pursuant to, or relevant to, the requirements of this section.

(B) Within ten working days from receipt of a complaint, the Secretary shall—

(i) designate a time and place for a hearing into the matters relating to the complaint at a location in close proximity to the local educational agency involved, or if the Secretary determines there is good cause, at some other location convenient to both the tribe, or its designee, and the local educational agency;

(ii) designate a hearing examiner to conduct the hearing; and

(iii) notify the affected tribe or tribes and the local educational agency involved of the time, place, and nature of the hearing and send copies of the complaint to the local educational agency and the affected tribe or tribes.

(2) HEARING.-The hearing shall be held within 30 days of the designation of a hearing examiner and shall be open to the public. A record of the proceedings shall be established and maintained.

(3) EVIDENCE; RECOMMENDATIONS; COST.-The complaining tribe, or its designee, and the local educational agency shall be entitled to present evidence on matters relevant to the complaint and to make recommendations concerning the appropriate remedial actions. Each party to the hearing shall bear only its own costs in the proceedings.

(4) FINDINGS AND RECOMMENDATIONS.-Within 30 days of the completion of the

hearing, the hearing examiner shall, on the basis of the record, make written findings of fact and recommendations concerning appropriate remedial action, if any, which should be taken. The hearing examiner's findings and recommendations, along with the hearing record, shall be forwarded to the Secretary.

(5) WRITTEN DETERMINATION.-Within 30 days of the Secretary's receipt of the findings, recommendations, and record, the Secretary shall, on the basis of the record, make a written determination of the appropriate remedial action, if any, to be taken by the local educational agency, the schedule for completion of the remedial action, and the reasons for the Secretary's decision.

(6) COPIES PROVIDED.-Upon completion of the Secretary's final determination, the Secretary shall provide the complaining tribe, or its designee, and the local educational agency with copies of the hearing record, the hearing examiner's findings and recommendations, and the Secretary's final determination. The final determination of the Secretary shall be subject to judicial review.

(7) CONSOLIDATION.-In all actions under this subsection, the Secretary shall have discretion to consolidate complaints involving the same tribe or local educational agency.

(8) WITHHOLDING.-If the local educational agency rejects the determination of the Secretary, or if the remedy required is not undertaken within the time established and the Secretary determines that an extension of the time established will not effectively encourage the remedy required, the Secretary shall withhold payment of all moneys to which such local agency is eligible under section 8003 until such time as the remedy required is undertaken, except where the complaining tribe or its designee formally requests that such funds be released to the local educational agency, except that the Secretary may not withhold such moneys during the course of the school year if the Secretary determines that such withholding would substantially disrupt the educational programs of the local educational agency.

(9) REJECTION OF DETERMINATION.-If the local educational agency rejects the determination of the Secretary and a tribe exercises the option under section 1101(d) of the Education Amendments of 1978 to have education services provided either directly by the Bureau of Indian Affairs or by contract with the Bureau of Indian Affairs, any Indian students affiliated with that tribe who wish to remain in attendance at the local educational agency against whom the complaint which led to the tribal action under such subsection (d) was lodged may be counted with respect to that local educational agency for the purpose of receiving funds under section 8003. In such event, funds under such section shall not be withheld pursuant to paragraph (8) and no further complaints with respect to such students may be filed under paragraph (1).

(f) CONSTRUCTION.-This section is based upon the special relationship between the Indian nations and the United States and nothing in this section shall be construed to relieve any State of any duty with respect to any citizens of that State.

Section 8005. Application for Payments Under Sections 8002 and 8003.

(a) IN GENERAL.-A local educational agency desiring to receive a payment under section 8002 or 8003 shall—

(1) submit an application for such payment to the Secretary; and

(2) provide a copy of such application to the State educational agency—

(b) CONTENTS.-Each such application shall be submitted in such form and manner, and

shall contain such information, as the Secretary may require, including—

(1) information to determine the eligibility of the local educational agency for a payment and the amount of such payment; and

(2) where applicable, an assurance that such agency is in compliance with section 8004 (relating to children residing on Indian lands).

(c) DEADLINE FOR SUBMISSION.-The Secretary shall establish deadlines for the submission of applications under this section.

(d) APPROVAL.—

(1) IN GENERAL.-The Secretary shall approve an application submitted under this section that—

(A) except as provided in paragraph (2), is filed by the deadline established under subsection (c); and

(B) otherwise meets the requirements of this title.

(2) REDUCTION IN PAYMENT.-The Secretary shall approve an application filed not more

than 60 days after a deadline established under subsection (e) that otherwise meets the requirements of this title, except that, notwithstanding section 8003(e), the Secretary shall reduce the payment based on such late application by 10 percent of the amount that would otherwise be paid.

(3) LATE APPLICATIONS.-The Secretary shall not accept or approve any application

that is filed more than 60 days after a deadline established under subsection (c).

(4) STATE APPLICATION AUTHORITY.-Notwithstanding any other provision of law, a

State educational agency that had been accepted as an applicant for funds under section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in fiscal year 1994 shall be permitted to continue as an

applicant under the same conditions by which such agency made application during such fiscal year only if such State educational agency distributes all funds received for the students for which application is being made by such State educational agency to the local educational agencies providing educational services to such students.

#### Section 8006. Payments for Sudden and Substantial Increases in Attendance of Military Dependent (REPEALED).

(a) ELIGIBILITY.-A local educational agency is eligible for a payment under this section if—

(1) the number of children in average daily attendance during the school year for which the determination is made is at least 10 percent or 100 more than the number of children in average daily attendance in the school year preceding the school year for which the determination is made; and

(2) the number of children in average daily attendance with a parent on active duty (as defined in section 101(18) of title 37, United States Code) in the Armed Forces who are in attendance at such agency because of the assignment of their parent to a new duty station between May 15 and September 30, inclusive, of the fiscal year for which the determination is made, as certified by an appropriate local official of the Department of Defense, is at least 10 percent or 100 more than the number of children in average daily attendance in the preceding school year.

(b) APPLICATION.-A local educational agency that wishes to receive a payment under

this section shall file an application with the Secretary by October 15 of the school year

for which payment is requested, in such manner and containing such information as the Secretary may prescribe, including information demonstrating that such agency is eligible for such a payment.

(c) CHILDREN TO BE COUNTED.-For each eligible local educational agency that applies

for a payment under this section, the Secretary shall determine the lesser of—

(1) the increase in the number of children in average daily attendance from the school year preceding the fiscal year for which the determination is made; and

(2) the number of children described in subsection (a)(2).

(d) PAYMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), from the amount appropriated for a fiscal year under section 8014(d), the Secretary shall pay each local educational agency with an approved application an amount equal to one-half of the national average per-pupil expenditure multiplied by the number of such children determined under subsection (c) for that local educational agency.

(2) Ratable Reduction.—(A) If the amount appropriated to carry out this section for

any fiscal year is insufficient to pay the full payment that all eligible local educational agencies are eligible to receive under this section for such year, then the Secretary shall ratably reduce the payments to such agencies for such year.

(B) If additional funds become available for making payments under paragraph (1) for such fiscal year, payments that were reduced under subparagraph (A) shall be increased on the same basis as such payments were reduced.

(e) NOTIFICATION PROCESS.—

(1) ESTABLISHMENT.—The Secretary shall establish with the Secretary of Defense, a notification process relating to the closure of Department of Defense facilities, or the adjustment of personnel levels assigned to such facilities, which may substantially affect the student enrollment levels of local educational agencies which receive or may receive payments under this title.

(2) INFORMATION.—Such process shall provide timely information regarding such closures and such adjustments—

(A) by the Secretary of Defense to the Secretary; and

(B) by the Secretary to the affected local educational agencies.

#### Section 8007. Construction.

(a) PAYMENTS AUTHORIZED.—From the amount appropriated for each fiscal year under



section 8014(e), the Secretary shall make payments to each local educational agency—

(1) that receives a basic payment under section 8003(b); and

(2)(A) in which the number of children determined under section 8003(a)(1)(C) constituted at least 50 percent of the number of children who were in average daily attendance in the schools of such agency during the preceding school year;

(B) in which the number of children determined under subparagraphs (B) and (D)(i) of section 8003(a)(1) constituted at least 50 percent of the number of children who were in average daily attendance in the schools of such agency during the school year preceding the school year for which the determination is made;

(C) that receives assistance under section 8003(f); or

(D) that receives assistance under section 8006 (REPEALED).

(b) AMOUNT OF PAYMENTS.-The amount of a payment to each such agency for a fiscal year shall be equal to—

(1) the amount appropriated under section 8014(e) for such year; divided by

(2) the number of children determined under section 8003(a)(2) for all local educational agencies described in subsection (a), but not including any children attending a school assisted or provided by the Secretary under section 8008 or section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994); multiplied by

(3) the number of such children determined for such agency.

(C) USE OF FUNDS.-Any local educational agency that receives funds under this section shall use such funds for construction, as defined in section 8013(3).

#### Section 8008. Facilities.

(a) CURRENT FACILITIES.-From the amount appropriated for any fiscal year under section 8014(f), the Secretary may continue to provide assistance for school facilities that were supported by the Secretary under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on the day preceding the date of the enactment of the Improving America's Schools Act of 1994).

(b) TRANSFER OF FACILITIES.—

(1) IN GENERAL.-The Secretary shall, as soon as practicable, transfer to the appropriate local educational agency or another appropriate entity all the right, title, and interest of the United States in and to each facility provided under section 10 of the Act of September 23, 1950 (Public Law 815, 81st Congress), or under section 204 or 310 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Acts were in effect on January 1, 1958).

(2) OTHER REQUIREMENTS.-Any such transfer shall be without charge to such agency or entity, and prior to such transfer, the transfer shall be consented to by the local educational agency or other appropriate entity, and may be made on such terms and conditions as the Secretary deems appropriate to carry out the purposes of this title.

Section 8009. State Consideration of Payments in Providing State Aid.

(a) GENERAL PROHIBITION.-Except as provided in subsection (b), a State may not consider payments under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) in determining for any fiscal year—

(A) the eligibility of a local educational agency for State aid for free public education; or

(B) the amount of such aid; or

(2) make such aid available to local educational agencies in a manner that results in less State aid to any local educational agency that is eligible for such payment than such agency would receive if such agency were not so eligible.

(b) STATE EQUALIZATION PLANS.—

(1) IN GENERAL.-A State may reduce State aid to a local educational agency that receives a payment under section 8002 or 8003(b) (except the amount calculated in excess of 1.0 under subparagraph (B) of section 8003(a)(2)) or under the Act of September 30, 1950 (Public Law 874, 81st Congress) as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994 (other than an increase in payments described in paragraphs (2)(B), (2)(C), (2)(D), or (3)(B)(ii) of section 3(d) of such Act of September 30, 1950) for any fiscal year if the Secretary determines, and certifies under subsection (c)(3)(A), that such State has in effect a program of State aid that equalizes expenditures for free public education

among local educational agencies in such State.

(2) COMPUTATION.—

(A) IN GENERAL.-For purposes of paragraph (1), a program of State aid equalizes expenditures among local educational agencies if, in the second fiscal year preceding the fiscal year for which the determination is made, the amount of per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the highest such per-pupil expenditures or revenues did not exceed the amount of such per-pupil expenditures made by, or per-pupil revenues available to, the local educational agency in the State with the lowest such expenditures or revenues by more than 25 percent.

(B) OTHER FACTORS.-In making a determination under this subsection, the Secretary shall—

(i) disregard local educational agencies with per-pupil expenditures or revenues above the 95th percentile or below the 5th percentile of such expenditures or revenues in the State; and

(ii) take into account the extent to which a program of State aid reflects the additional cost of providing free public education in particular types of local educational agencies, such as those that are geographically isolated, or to particular types of students, such as children with disabilities.

(3) EXCEPTION.-Notwithstanding paragraph (2), if the Secretary determines that the State has substantially revised its program of State aid, the Secretary may certify such program for any fiscal year only if—

(A) the Secretary determines, on the basis of projected data, that the State's program will meet the disparity standard described in paragraph (2) for the fiscal year for which the determination is made; and

(B) the State provides an assurance to the Secretary that, if final data do not demonstrate that the State's program met such standard for the fiscal year for which the determination is made, the State will pay to each affected local educational agency the amount by which the State reduced State aid to the local educational agency.

(c) PROCEDURES FOR REVIEW OF STATE EQUALIZATION PLANS.—

(1) WRITTEN NOTICE.—

(A) IN GENERAL.-Any State that wishes to consider payments described in subsection

(b)(1) in providing State aid to local educational agencies shall submit to the

Secretary, not later than 120 days before the beginning of the State's fiscal year, a written notice of such State's intention to do so.

(B) CONTENTS.-Such notice shall be in the form and contain the information the Secretary requires, including evidence that the State has notified each local educational agency in the State of such State's intention to consider such payments in providing State aid.

(2) OPPORTUNITY TO PRESENT VIEWS.-Before making a determination under subsection (b), the Secretary shall afford the State, and local educational agencies in the State, an opportunity to present their views.

(3) QUALIFICATION PROCEDURES.-If the Secretary determines that a program of State aid qualifies under subsection (b), the Secretary shall—

(A) certify the program and so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to any local educational agency adversely affected by such certification.

(4) NON-QUALIFICATION PROCEDURES.-If the Secretary determines that a program of State aid does not qualify under subsection (b), the Secretary shall—

(A) so notify the State; and

(B) afford an opportunity for a hearing, in accordance with section 8011(a), to the State, and to any local educational agency adversely affected by such determination.

(d) TREATMENT OF STATE AID.—

(1) IN GENERAL.-If a State has in effect a program of State aid for free public education for any fiscal year, which is designed to equalize expenditures for free public education among the local educational agencies of that State, payments under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) for any fiscal year may be taken into consideration by such State in determining the relative—

(A) financial resources available to local educational agencies in that State; and

(B) financial need of such agencies for the provision of free public education for children served by such agency, except that a State may consider as local resources funds received under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of

enactment of the Improving America's Schools Act of 1994) only in proportion to the share that local tax revenues covered under a State equalization program are of total local tax revenues.

(2) PROHIBITION.-A State may not take into consideration payments under this title or

under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) before such State's program of State aid has been certified by the Secretary under subsection (c)(3)—

(e) REMEDIES FOR STATE VIOLATIONS.—

(1) IN GENERAL.-The Secretary or any aggrieved local educational agency may, not earlier than 150 days after an adverse determination by the Secretary against a State for violation of subsections (a) or (d)(2) or for failure to carry out an assurance under subsection (b)(3)(B), and if an administrative proceeding has not been concluded, within such time, bring an action in a United States district court against such State for such violations or failure.

(2) IMMUNITY.-A State shall not be immune under the 11th amendment to the Constitution of the United States from an action described in paragraph (1).

(3) RELIEF.-The court shall grant such relief as the court determines is appropriate.

\*Section 60003 of P.L. 105-18 -- FY1997 Emergency Supplemental Appropriations Act

#### TIMELY FILING OF NOTICE

Notwithstanding any other provision of law, the Secretary of Education shall deem Kansas and New Mexico to have timely submitted under section 8009(c)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7709(c)(1)) in the States' written notices of intent to consider payments described in section 8009(b)(1) of the Act (20 U.S.C. 7709(b)(1)) in providing State aid to local educational agencies for school year 1997-98, except that the Secretary may require the state to submit such additional information as the Secretary may require, which information shall be considered part of the notices.

Section 8010. Federal Administration.

(a) PAYMENTS IN WHOLE DOLLAR AMOUNTS.-The Secretary shall round any payments under this title to the nearest whole dollar amount.

(b) OTHER AGENCIES.-Each Federal agency administering Federal property on which children reside, and each agency principally responsible for an activity that may occasion assistance under this title, shall, to the maximum extent practicable, comply with requests of the Secretary for information the Secretary may require to carry out this title.

(c) SPECIAL RULES.—

(1) CERTAIN CHILDREN ELIGIBLE UNDER SUBSECTION (a) OR (b) OF SECTION 3 OF

PUBLIC LAW 81-874.-Notwithstanding any other provision of law, for any fiscal year before fiscal year 1995, the Secretary shall treat as eligible under subsection (a) or (b) of section 3 of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such subsection was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), and shall forgive the obligation of a local educational agency to repay any amounts that such agency received under such section for such fiscal year based on, any child who would be eligible under such subsections except that such child does not meet the requirements of subsection (a)(1)(B) or (b)(2)(B), respectively, of such section 3, if such child meets the requirements of paragraph (3) of this subsection.

(2) CERTAIN CHILDREN ELIGIBLE UNDER SUBPARAGRAPHS (A) AND (G)(ii) OF SECTION

8003(a)(1).-(A) The Secretary shall treat as eligible under sub-paragraph (A) of section 8003(a)(1) any child who would be eligible under such subparagraph except that the Federal property on which the child resides or on which the child's parent is employed is not in the same State in which the child attends school, if such child meets the requirements of paragraph (3) of this subsection.

(B) The Secretary shall treat as eligible under subparagraph (G) of section 8003(a)(1) any child who would be eligible under such subparagraph except that such child does not meet the requirements of clause (ii) of such subparagraph, if such child meets the requirements of paragraph (3) of this subsection.

(3) REQUIREMENTS.-A child meets the requirements of this paragraph if-

(A) such child resides-

(i) in a State adjacent to the State in which the local educational agency serving the school such child attends is located; or

(ii) with a parent employed on Federal property in a State adjacent to the State in which such agency is located;

(B) the schools of such agency are within a more reasonable commuting distance of such child's home than the schools of the local educational agency that serves the school attendance area where such child resides;

(C) attending the schools of the local educational agency that serves the school attendance area where such child resides will impose a substantial hardship on such child;

(D) the State in which such child attends school provides funds for the education of such child on the same basis as all other public school children in the State, unless otherwise permitted under section 5(d)(2) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) or section 8009(b) of this title; and

(E) such agency received a payment for fiscal year 1994 under section 8003(b) (or such section's predecessor authority) on behalf of children described in paragraph (2).

## Section 8011. Administrative Hearings

### and Judicial Review.

(a) ADMINISTRATIVE HEARINGS.-A local educational agency and a State that is adversely affected by any action of the Secretary under this title or under the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994) shall be entitled to a hearing, on such action in the same manner as if such agency were a person under chapter 5 of title 5, United States Code.

(b) JUDICIAL REVIEW OF SECRETARY ACTION.—

(1) IN GENERAL.-A local educational agency or a State aggrieved by the Secretary's final decision following an agency proceeding under subsection (a) may, within 60 days

after receiving notice of such decision file with the United States court of appeals for the circuit in which such agency or State is located a petition for review of that action. The clerk of the court shall promptly transmit a copy of the petition to the Secretary. The Secretary shall then file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States

Code.

(2) FINDINGS OF FACT.-The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence. The Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the farther proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) REVIEW.-The court shall have exclusive jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

#### Section 8012. Forgiveness of

##### Overpayments.

Notwithstanding any other provision of law, the Secretary may forgive the obligation of a local educational agency to repay, in whole or in part, the amount of any overpayment received under this title, or under the Act of September 30, 1950 (Public Law 874, 81st Congress) or the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Acts were in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994), if the Secretary determines that the overpayment was made as a result of an error made by—

(1) the Secretary; or

(2) the local educational agency and repayment of the full amount of the overpayment will result in an undue financial hardship on the agency and seriously harm the agency's educational program.

#### Section 8013. Definitions.

For purposes of this title:

(1) ARMED FORCES.-The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.



(2) AVERAGE PER-PUPIL EXPENDITURE.-The term ‘average per-pupil expenditure’

means-

(A) the aggregate current expenditures of all local educational agencies in the State; divided by

(B) the total number of children in average daily attendance for whom such agencies provided free public education.

(3) CONSTRUCTION.-The term ‘construction’ means—

(A) the preparation of drawings and specifications for school facilities;

(B) erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;

(C) inspecting and supervising the construction of school facilities; and

(D) debt service for such activities.

(4) CURRENT EXPENDITURES.-The term ‘current expenditures’ means expenditures for

free public education, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but does not include expenditures for community services, capital outlay, and debt service, or any expenditures made from funds awarded under part A of title I and title VI. The determination of whether an expenditure for the replacement of equipment is considered a current expenditure or a capital outlay shall be determined in accordance with generally accepted accounting principles as determined by the State.

(5) FEDERAL PROPERTY.—

(A) IN GENERAL.-Except as provided in subparagraphs (B) through (F), the term ‘Federal property’ means real property that is not subject to taxation by any State or an political subdivision of a State due to Federal agreement, law, or policy, and that is—

(i) owned by the United States or leased by the United States from another entity;

(ii)(I) held in trust by the United States for individual Indians or Indian tribes;

(II) held by individual Indians or Indian tribes subject to restrictions on alienation imposed by the United States;

(III) conveyed at any time under the Alaska Native Claims Settlement Act to a Native individual, Native group, or village or regional corporation;

(IV) public land owned by the United States that is designated for the sole use and benefit of individual Indians or Indian tribes; or

(V) used for low-rent housing, as described in paragraph (10), that is located on land described in subclause (I), (II), (iii) or (IV) of this clause or on land that met one of those descriptions immediately before such property's use for such housing;

(iii)(I) part of a low-rent housing project assisted under the United States Housing Act of 1937; or

(II) used to provide housing for homeless children at closed military installations pursuant to section 501 of the Stewart B. McKinney Homeless Assistance Act; or

(iv) owned by a foreign government or by an international organization.

**(B) SCHOOLS PROVIDING FLIGHT TRAINING TO MEMBERS OF AIR FORCE.**—The term

‘Federal property’ includes, so long as not subject to taxation by any State or any political subdivision of a State, and whether or not that tax exemption is due to Federal agreement, law, or policy, any school providing flight training to members of the Air Force under contract with the Air Force at an airport owned by a State or political subdivision of a State.

**(C) NON-FEDERAL EASEMENTS, LEASES, LICENSES, PERMITS, IMPROVEMENTS, AND**

**CERTAIN OTHER REAL PROPERTY.**—The term ‘Federal property’ includes, whether or not subject to taxation by a State or a political subdivision of a State—

(i) any non-Federal easement, lease, license, permit, or other such interest in Federal property as otherwise described in this paragraph, but not including any non-Federal fee-simple interest;

(ii) any improvement on Federal property as otherwise described in this paragraph; and

(iii) real property that, immediately before its sale or transfer to a non-Federal party, was owned by the United States and otherwise qualified as Federal property described in this paragraph, but only for one year beyond the end of the fiscal year of such sale or transfer.

**(D) CERTAIN POSTAL SERVICE PROPERTY AND PIPELINES AND UTILITY LINES.**—Notwithstanding any other provision of this paragraph, the term ‘Federal

property' does not include-

(i) any real property under the jurisdiction of the United States Postal Service that is used primarily for the provision of postal services; or

(ii) pipelines and utility lines.

**(E) PROPERTY WITH RESPECT TO WHICH STATE OR LOCAL TAX REVENUES MAY NOT**

**BE EXPENDED, ALLOCATED, OR AVAILABLE FOR FREE PUBLIC EDUCATION.**—Notwithstanding any other provision of this paragraph, 'Federal property' does not include any property on which children reside that is otherwise described in this paragraph if—

(i) no tax revenues of the State or of any political subdivision of the State may be expended for the free public education of children who reside on that Federal property; or

(ii) no tax revenues of the State are allocated or available for the free public education of such children.

**(F) PROPERTY LOCATED IN THE STATE OF OKLAHOMA OWNED BY INDIAN HOUSING**

**AUTHORITY FOR LOW-INCOME HOUSING.**-The term 'Federal property' includes any real property located in the State of Oklahoma that—

(i) is owned by an Indian housing authority and used for low-income housing (including housing assisted under the mutual help ownership opportunity program under section 202 of the United States Housing Act of 1937); and

(ii) at any time—

(I) was designated by treaty as tribal land; or

(II) satisfied the definition of Federal property under section 403(l)(A) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994).

**(6) FREE PUBLIC EDUCATION.**-The term 'free public education' means education that is provided-

(A) at public expense, under public supervision and direction, and without tuition charge; and

(B) as elementary or secondary education, as determined under State law, except that, notwithstanding State law, such term—

(i) includes preschool education; and

(ii) does not include any education provided beyond grade 12.

(7) INDIAN LANDS.-The term ‘Indian lands’ means any Federal property described in paragraph (5)(A)(ii) or (5)(F).

(8) LOCAL CONTRIBUTION PERCENTAGE.-

(A) IN GENERAL.-The term ‘local contribution percentage’ means the percentage of current expenditures in the State derived from local and intermediate sources, as reported to and verified by the National Center for Education Statistics.

(B) HAWAII AND DISTRICT OF COLUMBIA.-Notwithstanding subparagraph (A), the local contribution percentage for Hawaii and for the District of Columbia shall be the average local contribution percentage for all States.

(9) LOCAL EDUCATIONAL AGENCY.-

(A) IN GENERAL.-Except as provided in subparagraph (B), the term ‘local educational agency’—

(i) means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent school district, or other school district; and

(ii) includes any State agency that directly operates and maintains facilities for providing free public education.

(B) EXCEPTION.-The term ‘local educational agency’ does not include any agency or school authority that the Secretary determines on a case-by-case basis—

(i) was constituted or reconstituted primarily for the purpose of receiving assistance under this title or the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on the day preceding the date of enactment of the Improving America’s Schools Act of 1994) or increasing the amount of such assistance; or

(ii) is not constituted or reconstituted for legitimate educational purposes.

(10) LOW-RENT HOUSING.-The term 'low-rent housing' means housing located on property that is described in paragraph (5)(A)(iii).

(11) REVENUE DERIVED FROM LOCAL SOURCES.-The term 'revenue derived from local sources' means—

(A) revenue produced within the boundaries of a local educational agency and available to such agency for such agency's use; or

(B) funds collected by another governmental unit, but distributed back to a local educational agency in the same proportion as such funds were collected as a local revenue source.

(12) SCHOOL FACILITIES.-The term 'school facilities' includes—

(A) classrooms and related facilities; and

(B) equipment, machinery, and utilities necessary or appropriate for school purposes.

#### Section 8014. Authorization of

##### Appropriations.

(a) PAYMENTS FOR FEDERAL ACQUISITION OF REAL PROPERTY.-For the purpose of making payments under section 8002, there are authorized to be appropriated \$16,750,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

(b) BASIC PAYMENTS; PAYMENTS FOR HEAVILY IMPACTED LOCAL EDUCATIONAL AGENCIES.-For the purpose of making payments under subsections (b) and (f) of section 8003, there are authorized to be appropriated \$775,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years, of which 6 percent shall be available, until expended, for each such fiscal year to carry out section 8003(f).

(c) PAYMENTS FOR CHILDREN WITH DISABILITIES.-For the purpose of making payments under section 8003(d), there are authorized to be appropriated \$45,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

(d) PAYMENTS FOR INCREASES IN MILITARY CHILDREN.-For the purpose of making

payments under section 8006, there are authorized to be appropriated

\$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

(e) CONSTRUCTION.-For the purpose of carrying out section 8007, there are authorized to be appropriated \$25,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

(f) FACILITIES MAINTENANCE.-For the purpose of carrying out section 8008, there are

authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the four succeeding fiscal years.

(g) ADDITIONAL ASSISTANCE FOR CERTAIN LOCAL EDUCATIONAL AGENCIES IMPACTED

BY FEDERAL PROPERTY ACQUISITION.-For the purpose of carrying out section 8002(j)

there are authorized to be appropriated such sums as are necessary beginning in fiscal year 1998 and for each succeeding fiscal year.

SEC.306. (a) From any unobligated funds that are available to the Secretary of Education to carry out section 5 or 14 of the Act of September 23, 1950 (Public Law 815, 81st Congress) (as such Act was in effect on September 30, 1994)

(1) half of the funds shall be available to the Secretary of Education to carry out subsection (c) of this section; and

(2) half of the funds shall be available to the Secretary of Education to carry out subparagraphs (B), (C), (D) of section 8007(a)(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707 (a)(2)), as amended by subsection (b) of this section.

(b) Subparagraph (B) of section 8007(a)(2) of the Elementary and Secondary Education

Act of 1965 (20 U.S.C. 7707 (a)(2)) is amended by striking "and in which the agency" and all that follows through "renovation".

(c)(1) The Secretary of Education shall award the funds described in subsection (a)(1) to local educational agencies, under such terms and conditions as the Secretary of Education determines appropriate, for the construction of public elementary or secondary schools on Indian reservations or in school districts that-

(A) the Secretary of Education determines are in dire need of construction funding;

(B) contain a public elementary or secondary school that serves a student population which is 90 percent Indian students; and

(C) serve students who are taught in inadequate or unsafe structures, or in a public elementary or secondary school that has been condemned.

(2) A local educational agency that receives construction funding under this subsection for fiscal year 1996 shall not be eligible to receive any funds under section 8007 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7707) for school construction for fiscal years 1996 and 1997.

(3) As used in this subsection, the term "construction" has the meaning given that term in section 8013(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)).

(4) No request for construction funding under this subsection shall be approved unless the request is received by the Secretary of Education not later than 30 days after the date of enactment of this Act.

(d) The Secretary of Education shall report to the House and Senate Appropriations Committees on the total amounts available pursuant to subsections (a)(1) and (a)(2) within 30 days of enactment of this Act.

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 1996."

### Title III. Operation and Maintenance

#### Subtitle A-Authorization of Appropriations

##### SEC.301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 1996 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, \$18,746,695,000.

(2) For the Navy, \$21,493,155,000.

- (3) For the Marine Corps, \$2,521,822,000.
- (4) For the Air Force, \$18,719,277,000.
- (5) For Defense-wide activities, \$9,910,476,000.
- (6) For the Army Reserve, \$1,129,191,000.
- (7) For the Naval Reserve, \$868,342,000.
- (8) For the Marine Corps Reserve, \$100,283,000.
- (9) For the Air Force Reserve, \$1,516,287,000.
- (10) For the Army National Guard, \$2,361,808,000.
- (11) For the Air National Guard, \$2,760,121,000.
- (12) For the Defense Inspector General, \$138,226,000.
- (13) For the United States Court of Appeals for the Armed Forces, \$6,521,000.
- (14) For Environmental Restoration, Defense, \$1,422,200,000.
- (15) For Drug Interdiction and Counter-drug Activities, Defense-wide, \$680,432,000.
- (16) For Medical Programs, Defense, \$9,876,525,000.
- (17) For support for the 1996 Summer Olympics, \$15,000,000.
- (18) For cooperative Threat Reduction programs, \$300,000,000.
- (19) For Overseas Humanitarian, Disaster, and Civic Aid programs, \$50,000,000.

SEC. 1074 ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT  
BENEFIT  
DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT  
OF DEFENSE  
CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL  
YEAR

1996.-(1) Of the amounts authorized to be appropriated in section 301(5)-

(A) \$30,000,000 shall be available for providing educational agencies assistance (as defined in paragraph (4)(A)) to local educational agencies; and



(B) \$5,000,000 shall be available for making educational agencies payments (as defined in paragraph (4)(B)) to local education agencies.

(2) Not later than June 30, 1996, the Secretary of Defense shall-

(A) notify each local educational agency that is eligible for educational agencies assistance for fiscal year 1996 of that agency's eligibility for such assistance and the amount of such assistance for which that agency is eligible; and

(B) notify each local educational agency that is eligible for an educational agencies payment for fiscal year 1996 of that agency's eligibility for such payment and the amount of the payment for which that agency is eligible.

(3) The Secretary of Defense shall disburse funds made available under subparagraphs (A) and (B) of paragraph (1) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to paragraph (2).

(4) In this section:

(A) The term "educational agencies assistance" means assistance authorized under subsection (b) of section 386 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 20 U.S.C. 238 note).

(B) The term "educational agencies payments" means payments authorized under subsection (d) of that section, as amended by subsection (d).

(b) SPECIAL RULE FOR 1994 PAYMENTS.-The Secretary of Education shall not consider any payment to a local educational agency by the Department of Defense, that is available to such agency for current expenditures and used for capital expenses, as funds available to such agency for purposes of making a determination for fiscal year 1994 under section 3(d)(2)(B)(i) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such Act was in effect on September 30, 1994).

SEC. 386. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT  
BENEFIT  
DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT  
OF DEFENSE  
CIVILIAN EMPLOYEES.

(a) ASSISTANCE AUTHORIZED. - The Secretary of Defense, in consultation with the

Secretary of Education, shall provide financial assistance to local educational agencies in States as provided in this section.

**(b) SCHOOLS WITH SIGNIFICANT NUMBERS OF MILITARY DEPENDENT STUDENTS.-** The

Secretary of Defense shall provide financial assistance to an eligible local educational agency described in subsection (c) if, without such assistance, that agency will be unable (as determined by the Secretary of Defense in consultation with the Secretary of Education) to provide the students in the schools of the agency with a level of education that is equivalent to the minimum level of education available in the schools of the other local educational agencies in the same State.

**(c) ELIGIBLE LOCAL EDUCATIONAL AGENCIES. -** A local educational agency is eligible

for assistance under subsection (b) for a fiscal year if -

(1) at least 20 percent (as rounded to the nearest whole percent) of students in average daily attendance in the schools of that agency in that fiscal year are military dependent students(counted under section 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a));

(2) there has been a significant increase, as determined by the Secretary of Defense, in the number of military dependent students in average daily attendance in the schools of that agency as a result of a relocation of Armed Forces personnel or civilian employees of the Department of Defense or as a result of a realignment of one or more military installations; or

(3) by reason of a consolidation or reorganization of local educational agencies, the local educational agency is a successor of a local educational that, for fiscal year 1992-

(A) was eligible to receive payments in accordance with Department of Defense Instruction 1342.18, dated June 3, 1991; and

(B) satisfied the requirement in paragraph (1) or (2).

**(d) ADJUSTMENTS RELATED TO BASE CLOSURES AND REALIGNMENTS.-** To assist

communities in making adjustments resulting from reductions in the size of the Armed Forces, the Secretary of Defense shall, in consultation with the Secretary of Education, make payments to local educational agencies that, during the period between the end of the school year preceding the fiscal year for which the payments are authorized and the beginning of the school year immediately preceding that school year, had an overall reduction of not less than 20 percent in the number of military dependent students as a result of the closure or realignment of military installations.

(e) REPORT ON IMPACT OF BASE CLOSURES ON EDUCATIONAL AGENCIES.- (1) Not

later than February 15 of each of 1993, 1994, 1995, and 1996, the Secretary of Defense, in consultation with the Secretary of Education, shall submit to Congress a report on the local educational agencies affected by the closures and realignment of military installations and by redeployments of members of the Armed Forces.

(2) Each report shall contain the following:

(A) The number of dependent children of members of the Armed Forces or civilian employees of the Department of Defense who entered the schools of the local educational agencies during the preceding school year as a result of closures, realignments, or redeployments.

(B) The number of dependent children of such members or employees who withdrew from the schools of the local educational agencies during that school year as a result of closures, realignments, or redeployments.

(C) The amounts paid to the local educational agencies during that year under the Act of September 30, 1950 (Public Law 847, Eighty-first Congress; 20 U.S.C. 236 et seq.), title VIII of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7701 et seq.), or any other provision of law authorizing the payment of financial assistance to local communities or local educational agencies on the basis of the presence of dependent children of such members or employees in such communities and in the schools of such agencies.

(D) The projected transfers of such members and employees in connection with closures, realignments, and redeployments during the 12-month period beginning on the date of the report, including-

(i) the installations to be closed or realigned;

(ii) the installations to which personnel will be transferred as a result of closures, realignments, and redeployments; and

(iii) the effects of such transfers on the number of dependent children who will be included in determinations with respect to the payment of funds to each affected local agency.

(f) FUNDING.- Of the amounts appropriated for the Department of Defense for operation and maintenance in fiscal year 1993 pursuant to the authorization of appropriations in section 301-

(1) \$50,000,000 shall be available for providing assistance to local educational agencies under subsection (b); and

(2) \$8,000,000 shall be available for making payments to local educational agencies under subsection (d).

(g) LIMITATION ON TRANSFER AND OBLIGATION OF FUNDS.- (1) The adjustment

assistance related to base closures and realignments under subsection (d) may be obligated for such adjustment assistance only if expenditures of that adjustment assistance for fiscal year 1993 have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) Not later than the third day after the date of the enactment of this Act, the Director of the Office of Management and Budget shall make a determination as to the classification by discretionary spending limit category for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 of the amount appropriated for adjustment assistance related to base closures and realignments under subsection (d). If the Director determines that the amount shall not classify against the defense category (as described in paragraph (1)), then the President shall submit to Congress a report stating that the Director has made such a determination and the amount that will not classify against the defense category and containing an explanation for the determination.

(3) The amount listed in the report under paragraph (2) may be transferred only to the programs under title III other than the program under subsection (d) pursuant to amounts specified in appropriation Acts. Any such transfer shall be taken into account for purposes of calculating all reports under section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(h) DEFINITIONS.- In this section:

(1) The term "local control agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(2) The term "military dependent student" means a student that is --

(A) a dependent child of a member of the Armed Forces; or

(B) a dependent child of a civilian employee of the Department of Defense.

(3) The Term "State" means each of the 50 States and the District of Columbia.

2008 Authority to use funds for certain educational purposes.

Funds appropriated to the Department of Defense may be used to carry out construction , as defined in section 8013 (3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708), relating to the provision of assistance to certain school facilities under the impact aid program. (Added Oct. 19, P.L. 98-525, Title XIV, 1401(g) (1) in part, 98 Stat.2618.)

## Sec. 2 APPLICATION FOR INCREASE PAYMENTS.

(a) PAYMENTS -Notwithstanding any other provision of law-

(1) the Bonesteel-Fairfax school district number 26-5, South Dakota, and Wagner Community School District number 11-4, South Dakota, shall be eligible to apply for payment for fiscal year 1994 under section 3(d) (2) (B) of the Act of September 30, 1950 (Public Law 874, 81st Congress) (as such section was in effect on September 30, 1994); and

(2) the Secretary of Education shall use a subgroup of 10 or more generally comparable local educational agencies for the purpose of calculating a payment described in paragraph (1) for a local educational agency described in such paragraph.

(b) APPLICATION.- In order to be eligible to receive a payment described in subsection

(a), a school district described in such subsection shall apply for such payment within 30 days after the date of enactment of this Act.

(c) CONSTRUCTION.- Nothing in this section shall be construed to require a local educational agency that received a payment under section 3(d)(2)(B) of the Act of September 30, 1950 ( Public Law 874, 81st Congress) as such section was first in effect on September 30, 1994) for fiscal year 1994 to return such payment or a portion of such payment to the federal government.

## SEC.7 TREATMENT OF IMPACT AID PAYMENTS.

(A) IN GENERAL.- The Secretary of Education shall treat any State as having met the requirements of section 5(d)(2)(A) of the Act of September 30, 1950 (Public Law 874,

81st Congress) for fiscal year 1991 ( as such section was in effect for each of the fiscal year), and as not having met those requirements for each of the fiscal years 1992, 1993, and 1994 ( as such section was in effect for fiscal year 1992, 1993, and 1994, respectively), if-

(1) the State's program of State aid was not certified by the Secretary under section 5(d)(2)(C)(i) of the Act of September 30, 1950 ( Public Law 874, 81st Congress) for any fiscal year prior to fiscal year 1991;

(2) the State submitted timely notice under that section of the State's intention to seek that certification for fiscal year 1991;

(3) the Secretary determined that the State did not meet the requirements of section 5(d)(2)(A) of such Act for fiscal year 1991; and

(4) the State made a payment to each local educational agency in the state (other than a local educational agency that received a payment under section 3(d)(2)(B) of such Act for fiscal year 1991) in an amount equal to the difference between the amount such agency received under such Act for fiscal year 1991 and the amount such agency would have received under such Act for fiscal year 1991 if payments under such Act had not been taken into consideration in awarding State aid to such agencies for fiscal year 1991.

(b) REPAYMENT NOT REQUIRED.-Notwithstanding any other provision of law, any local educational agency in a State that meets the requirements of paragraphs (1) through (4) of subsection (a) and that received funds under section 3(d)(2)(B) of the Act of September 30, 1950 (Public Law 874, 81st Congress) for fiscal year 1991 ( as such section was in effect for such fiscal year ) shall not, by virtue of subsection (a), be required to repay those funds to the Secretary of Education.

Sec. 8 SPECIAL RULE RELATING TO AVAILABILITY OF FUNDS FOR THE  
LOCAL  
EDUCATIONAL AGENCY SERVING THE NORTH HANOVER TOWNSHIP  
PUBLIC  
SCHOOLS, NEW JERSEY, UNDER PUBLIC LAW 874, 81ST CONGRESS.

The Secretary of Education shall not consider any funds that the Secretary of Education determines the local educational agency serving the North Hanover Public Schools, New Jersey, has designated for a future liability under an early retirement incentive program as funds available to such local educational agency for purposes of determining the eligibility of such local educational agency for a payment for fiscal

year 1994, or the amount of any such payment under section 3(d)(2)(B) of the Act of September 30, 1950 (Public Law 874, 81st Congress), as such section was in effect for such fiscal year.

#### Sec. 9 CORRECTED LOCAL CONTRIBUTION RATE

(a) COMPUTATION.-The Secretary of Education shall compute a payment for a local educational agency under the Act of September 30, 1950 (Public Law 874, 81st Congress) for each of the fiscal years 1991 through 1994 (as such Act was in effect for each of those fiscal years, as the case may be) using a corrected local contribution rate based on generally comparable school districts, if-

(1) an incorrect local contribution rate was submitted to the Secretary of Education by the State in which such agency is located, and the incorrect local contribution rate was verified as correct by the Secretary of Education; and

(2) the corrected local contribution rate is subject to review by the Secretary of Education.

(B) PAYMENTS.- Using funds appropriated under the Act of September 30, 1950 (Public Law 874, 81st Congress) for fiscal years 1991 through 1994 that remain available for obligation (if any), the Secretary of Education shall make payments based on the computations described in subsection (a) to the local educational agency for such fiscal years.

The Impact Aid items listed below were included in the 1998 Labor, Health and Human Services, and Education Appropriations Bill (PL 105-78). These do not change the Impact Aid statute; they are "one-time fixes" requested by various members of Congress.

\* Provided that the Secretary of Education shall treat as timely filed, and shall process for payment, an application for a fiscal year 1998 payment from the local educational agency for Boston, Massachusetts, under section 8003 of the ESEA of 1965 if the Secretary has received that application not later than 30 days after the enactment of the Act.

\*Provided further that the Secretary of Education shall forgive any overpayments established for fiscal year 1994 under section 3(d)(2)(B) of the Act of September 30, 1950 for any local education agency in the State of Texas receiving funds appropriated for fiscal year 1994 under the authority of this section.

\*Provided further that section 8 of Public Law 104-195 is amended by striking the period after 'year' and adding the following: 'or, for fiscal year 1995 or fiscal year 1996, the amount of any payment under section 8003(f) of the ESEA of 1965.

\*Provided further that of the funds available for section 8007, the Secretary shall, under such terms and condition he determines appropriate, first provide \$1,500,000 to applicant number 11-2815 and \$1,500,000 to applicant number 36-4403 for the construction of public elementary or secondary schools where the current structures are unsafe and pose serious health threats to the students, if requests for funding and construction project descriptions are submitted the Secretary within 30 days of enactment of this Act.

\*Provided further that notwithstanding any deadline established by the Secretary under subsection (c) of section 8005 of the ESEA and without regard to paragraphs (1)(A), (2), and (3) of subsection (d) of that section, the Secretary shall accept, as if timely received, an application from the Maconaquah School Corporation, Bunker Hill, Indiana, under section 8003 of that Act for fiscal year 1996 if the Secretary has received that application no later than 20 days after the enactment of this Act. And provided further that notwithstanding any other provision of law, the Secretary of Defense shall treat any data included in an application described in the preceding proviso, and that is approved by the Secretary of Education, as data to be used in determining the eligibility of the Maconaquah School for, and the amount of, a payment for any of the fiscal years 1998 through 2000 under section 386 of the National Defense Authorization Act for Fiscal Year 1993.

\*SEC. 314. (a) IN GENERAL - From funds made available to carry out section 3 (d)(2)(B) of the Act of September 30, 1950 for fiscal year 1994 that remain after making 100 percent of the payments local education agencies are eligible to receive under such section for such fiscal year, the Secretary shall make payments to applicants for fiscal year 1996 pursuant to subsection (b).

The Impact Aid items listed below were included in the 1999 Omnibus Appropriations Bill (PL 105-277).

\*Provided further, that (a) from the funds appropriated for payments to local education agencies under section 8003(f) of the Elementary and Secondary Education of 1965 (ESEA) for fiscal year 1999, the Secretary of Education shall distribute supplemental payments for certain local educational agencies, as follows:

(1)First, from the amount of \$68,000,000, the Secretary shall make supplemental payments to the following agencies under section 8003(b) of the ESEA:

(A) Local educational agencies that receive assistance under section 8003(f) for fiscal year 1998.



(B) Local educational agencies with Impact Aid applicant numbers 20-0019, 51-0504, 51,2801,51-1903, 51-0010, 51-4203, 51-2101, 51-0811, and 51-0904.

(C) Any eligible local education agency with at least 25,000 children in average daily attendance, at least 55 percent federally connected described in section 8003(a)(1) in average daily attendance, and at least 6,500 children described in sections 8003(a)(1)(A) and (B) in average daily attendance.

(2) From the remaining \$2,000,000 and any amounts available after making payments under paragraph (1), the Secretary shall then make supplemental payments to local educational agencies that are not described in paragraph (1) of this subsection, but that meet the requirements of paragraphs (2) and (4) of section 8003(f) of the ESEA for fiscal year 1999, except that such agencies may count for purposes of eligibility for these supplemental payments, all students described in section 8003(a)(1).

(3) After making payments under section 8003(f) to all eligible applicants for fiscal years before fiscal year 1999, the Secretary shall use the combined amount of any funds remaining available under that subsection, and any amounts that may remain for fiscal year 1999 after making payments under paragraphs (1) and (2) of this subsection, to make the following payments:

(A) First, an amount not to exceed \$3,000,000 to Impact Aid applicant number 20-0019.

(B) Second, from any remaining funds, an amount not to exceed \$3,000,000 to Impact Aid applicant number 53-0061.

(C) Third, from any remaining funds, increased basic support payments under section 8003(b) for all eligible applicants.

(b) In calculating the amounts of supplemental payments for agencies described in subparagraphs (1)(A) and (B) and paragraph (2) of subsection (a), the Secretary shall use the formula contained in section 8003(b)(1)(C) of the ESEA, except that –

(1) eligible local educational agencies may count all children described in section 8003(a)(1) in computing the amount of those payments;

(2) maximum payments for any of those agencies that use local contribution rates identified in section 8003(b)(1)(C)(i) of (ii) shall be computed by using four-fifths instead of one-half of those rates;

(3) the learning opportunity threshold percentage of all such agencies under section 8003(b)(2)(B) shall be deemed to be 100;

(4) for an eligible local educational agency with 35 percent or more of its children in

average daily attendance described in either subparagraph (D) or (E) of section 8003(a)(1), the weighted student unit figure from its regular basic support payment shall be recomputed by using a factor of 0.55 for such children;

(5) for an eligible local educational agency with fewer than 100 children in average daily attendance, the weighted student unit figure from its regular basic support payment shall be recomputed by multiplying the total number of children described in section 8003(a)(1) by a factor of 1.5; and

(6) for an eligible local educational agency whose total number of children in average daily attendance is at least 100, but fewer than 750, the weighted student unit figure from its regular basic support payment shall be recomputed by multiplying the total number of children described in section 8003(a)(1) by a factor of 1.25.

(c) For a local educational agency described in subsection (a)(1)(C) above, the Secretary shall use the formula contained in section 8003(b)(1)(C) of ESEA, except that the weighted student unit total from its regular basic support payment shall be increased by 35 percent and its learning opportunity threshold percentage shall be deemed to be 100.

(d) For each eligible local educational agency, the calculated supplemental basic support payment shall be reduced by subtracting the agency's regular fiscal year 1999 section 8003(b) basic support payment.

(e) The actual supplemental basic support payment that local educational agencies receive shall be treated under section 8009 in the same manner as payments under section 8003(f).

(f) If the sums described in subsections (a)(1) and (2) above are insufficient to pay in full the calculated supplemental basic support payments for the local educational agencies identified in those subsections, the Secretary shall ratably reduce the supplemental basic support payment to each local educational agency:

\*Provide further, That the Secretary of Education shall treat as timely filed, and shall process for payment, an application for a fiscal year 1998 payment from the local educational agency for Prince Georges County, Maryland, under section 8003 of the Elementary and Secondary Education Act of 1965, if the Secretary has received that application not later than 30 days from the enactment of this Act.

\*Provide further, That from the amount appropriated for section 8008 the Secretary shall award \$500,000 to the Randolph Field Independent School District, Texas

\*Provide further, That for the purposes of computing the amount of payment for a local educational agency for children identified under section 8003, children residing in

housing initially acquired or constructed under section 801 of the Military Construction

Authorization Act of 1984 (Public Law 98-115) ("Build to Lease" program) shall be considered as children described under section 8003(a)(1)(B) if the property described is within the fenced security perimeter of the military facility upon which such housing is situated.

\*Provide further, That if such property is to owned by the Federal Government, is subject to taxation by a State or political subdivision of a State, and thereby generates revenues for a local educational agency which received a payment from the Secretary under section 8003, the Secretary shall:

(A) require such local educational agency to provide certification from an appropriate official of the Department of Defense that such property is being used to provide military housing; and

(B) reduce the amount of such payment by an amount equal to the amount of revenue from such taxation received in the second preceding fiscal year by such local educational agency, unless the amount of such revenue was taken into account by the State for such second preceding fiscal year and already resulted in a reduction in the amount of State aid paid to such local educational agency.

Provide further, That the funds available for payments under section 8002, the Secretary shall pay the San Diego, California, Centennial, Pennsylvania, and Hatboro-Horsham, Pennsylvania, local educational agencies the sum of \$500,000 each, in addition to their regularly calculated payments, except that the total funds these agencies receive under this section may not exceed 50 percent of their maximum section 8002 payments.

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